





IN THE

Supreme Court of the United States

October Term, 1974

No. 73-1377

RUSSELL E. TRAIN, as Administrator of the United States Environmental Protection Agency,

Petitioner,

v.

THE CITY OF NEW YORK, on behalf of itself and all other similarly situated municipalities within the State of New York, et al.,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

SUPPLEMENTAL BRIEF OF RESPONDENT THE CITY OF NEW YORK

This supplemental brief is submitted to explain to the Court the position of the City of New York regarding the effect of the Impoundment Control Act of 1974, PL 93-344 (88 Stat. 297), Title X (hereinafter "Impoundment Act"), on this case.

(1)

It is our belief that the mere enactment of the Impoundment Act does not affect this case by virtue of the disclaimer contained in section 1001(4) thereof. That provision states, in pertinent part, that "nothing contained in [the Impoundment] Act . . . shall be construed as . . . affecting in any way the claims or defenses of any party to litigation concerning impoundment." We conclude from that language that the controversy between the parties in the instant case is preserved. To this limited extent

we therefore agree with the Government's contentions concerning the effect of the Impoundment Act.*

(2)

We do believe the Impoundment Act has a significant effect on the peripheral question of the scope of the Executive's discretion, at the obligational stage, to hold up the obligation of allotted sums. Any such future action taken for fiscal reasons (as distinct from noncompliance with the conditions in Section 204 of the Federal Water Pollution Control Act) would clearly be a "deferral of budget authority" subject to the procedures set forth in section 1013 of the Impoundment Act. Thus, the scope of discretion intended by the Harsha Amendments has become academic in view of the superseding procedure prescribed by the Impoundment Act.

Respectfully submitted,

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* We disagree with much of the Government's reasoning in reaching its position. We also disagree with the Government's conclusion as to the Impoundment Act's applicability to (as distinguished from the effect of its enactment upon) pre-enactment impoundments and the consequences of congressional action regarding such impoundments. But these are not issues in this case and, accordingly, any discussion that we might offer would only deal with matters peripheral to the questions presented by this case.